« Study on environmental crime in the 27 Member States »

Study JLS/D3/2006/05

FINAL REPORT

Approved by the Contracting authority

For

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DISCLAIMER:

This study has been carried out by the Law Firm Huglo-Lepage at the request of DG JLS of the European Commission. Three studies on criminal sanctions applicable to violations of certain pieces of EC legislations had previously already been carried out for the European Commission, as well as two studies concerning non-criminal sanctions. These previous studies on criminal sanctions contain a detailed presentation of the criminal and judicial systems in the (then 15) Member States and in the (then) candidate countries. The aim of the present study, that was carried out within a tight time frame and with a limited budget, was not to recall all the information already provided in the previous studies, notably it merely mentions the criminal sanctions laid down by the national legislations.
1 Introduction

- Background information:

On 27 January 2003, on the initiative of the Kingdom of Denmark, the Council of the European Union adopted the framework Decision.

Based on Title VI of the Treaty on European Union, the framework decision constitutes, as is clear from the first three recitals in its preamble, the instrument by which the European Union intends to respond with concerted action to the disturbing increase in offences posing a threat to the environment.

The framework decision lays down a number of environmental offences, in respect of which the Member States are required to prescribe criminal penalties.

The framework decision distinguished environmental offences committed intentionally from negligent offences. The requested study does not explicitly mention this distinction. We understand that it should cover both intentional and negligent offences.

With regard to the environmental offences, the framework decision stated in its articles 2 to 7 that:

- Member States shall adopt necessary measures to qualify these infringement as criminal offences;
- Member States shall ensure that, under national legislation, participating or instigating the offences is punishable
- The criminal penalties laid down in each Member State shall be “effective, proportionate and dissuasive” and shall include, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition. Criminal penalties may be accompanied by other penalties or measures.
- Legal persons shall be liable as the result of an act or omission and the sanctions to which they are to be subject under national legislation shall include criminal and non-criminal fines and may include other sanctions.

The other provisions of the framework decision were dealing with jurisdiction, extradition and prosecutions of persons who have committed environmental offences.

In case C-176/03 the Commission, supported by the European Parliament, requested the Court to annul the framework decision in its entirety, claiming that article 2 to 7 of the act were falling within the Community’s competence.

In its judgment given on 13 September 2005, the Court held that, although the Community legislature has no general competence in criminal matters, it is competent, under Article 175 EC, to require the Member States to prescribe penalties for infringements of Community environment-protection legislation if it takes the view that that is a necessary means of ensuring that the EC environmental legislation is effective. In other word the Court considered that the (partial) harmonisation of national criminal laws, in particular of the
constituent elements of environmental offences and of the criminal penalties attached to these offences, is designed to support the EC environmental policy.

It stems from the Judgment of the Court that the EC legislature can adopt a Directive based on article 175 EC if:

- The main purpose of this act is the protection of the environment;
- Member States national legislation differ as regards the constituent elements of various criminal offences committed to the detriment of the environment;
- The criminal penalties applicable to the various criminal offences differ greatly from one Member State to another and are not effective, proportionate and dissuasive

• Aim and scope of the study

The European Commission plans to submit to the European Parliament and the Council a proposal for a directive on environmental crime. In order to justify its proposal with regards to the above mentioned Court judgement, the Commission needs to demonstrate that a harmonisation of criminal laws of the Member States, in particular of the constituent elements of environmental offences and of the criminal penalties attached to these offences, is necessary to ensure the proper implementation of EC environmental legislation. Therefore, it is necessary for the Commission to be able to provide the Council and the Parliament with an overview of the current legislation in the Member states regarding criminal offences that differ from those covered in the Framework decision, in order to justify the harmonisation of these measures.

A first step in a harmonisation effort is that the Commission should know how the non-respect of national rules implementing specific provisions of 4 Directives and 1 Regulation are sanctioned in the various member states today.

The relevant environmental offences are:

- the unlawful discharge of hazardous substances into water;
- the unlawful dumping of waste;
- the illegal shipment of waste as defined in Article 2(35) of the Waste Shipment Regulations;
- the unlawful significant deterioration of a protected habitat;
- the unlawful trade in or use of ozone-depleting substances

Three studies have already been carried out on this issue on behalf of the Commission in 2002 and 2003. However, theses studies did not cover the exact same offences and did not cover the now 27 Members States. Besides, the information contained in these previous studies had to be updated.

The study covers the five listed offences and aims at conveying a clear overview of the national legislation in force and the levels of sanctions.

Although the case law and the judicial practice may influence the effectiveness of penalties, this study covers only legislation and not case law or judicial practice.
• **Tables per Country (25)**

In the detailed tables (Annex I) each of the criminal offences covered by the Study has been linked to a corresponding violation of an EC law provision. The third column mentions the corresponding infringement in national legislation as well as the national text laying down the sanctions applicable to this offence. In this table, the relevant provisions have been reproduced in the official language of each Member States, unless an English translation was available. The third column mentions the type and level of criminal sanctions for natural persons. The fourth column mentions criminal sanctions for legal persons. **Where no criminal penalty has been set forth**, the table mentions any other relevant non-criminal penalty. When necessary, explanatory notes are provided. The Member States are classified by alphabetical order.

Since the complete tables per country appeared to be quite lengthy and complex, the Commission requested during the inception meeting that simplified tables per country should also be provided (Annex II). These simplified tables provide a synthesised qualification of the offence under national legislation and mention maximum prison sanctions for natural and fines for legal persons. The Member States are classified by alphabetical order. The information provided under annex II are obviously less accurate that the information provided under annex I, notably since only two types of sanctions (prison and fine) are mentioned.

• **Table per offence (5)**

In the tables per offence (Annex III) the first column lists the Member States in alphabetical order. The second column mentions prison sanctions for natural persons and the third column mentions criminal or administrative fines applicable to legal persons.

• **Executive Summary**

The executive summary highlights the main differences between the penalties applicable in the 27 Member States to each of the 5 relevant offences. This executive summary also mentions cases where the criminal penalties are inexistent or particularly low but it does not include a thorough analysis of the effectiveness of each sanction.
2 Executive Summary

This executive summary highlights the main differences between the penalties applicable in the 27 Member States to each of the 5 relevant offences. This executive summary does not discuss whether the qualification of the offence to which these sanctions apply under national law totally matches with the offences identified by the Commission. The tables show that the qualification of the offence under national legislation may be either very vague or much narrower than the offences that fall within the scope of this study.

2.1 Natural Persons

2.1.1 Foreword

With regard to the material element of the offences criminalized under national legislation, Annexes I and II show that for the two fist offences (unlawful discharge of dangerous substances into water and unlawful dumping of waste) most Member States the material element is very similar to the violation of EC law identified in the second column of Annex I.

Concerning the three other offences (illegal shipment of waste, unlawful significant deterioration of a protected habitat and unlawful trade in or use of ozone depleting substances), annex I and II highlight certain major differences between the qualification of the offence actually criminalized in certain member states and the relevant violation of EC law.

These differences are particularly noticeable with regard to the offence of illegal shipment of waste in the following Member states: Austria, Bulgaria, the Czech republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

With regard to sanctions applicable to natural persons, we have mentioned both fines and imprisonment penalties (and sometimes, where relevant, other criminal sanctions) in the Annex I tables, whereas the tables in Annex II and III only provide information concerning prison penalties, as requested by the Commission.

In most Member States, where the 5 offences falling within the scope of this study are criminalized, it is sanctioned by a prison penalty or a fine.

Some Member States have established cumulative sanctions (prison and fine) while others have applied an alternative system (prison or fine). Certain Member States have chosen a third approach according to which the judge decides whether to impose an imprisonment penalty or a fine or both sanctions.

The following Member States apply a purely cumulative approach (subject to exceptions): Bulgaria, Denmark, France, Estonia, Germany, Greece and Greece, Romania and Sweden.

The following Member States apply a purely alternative approach: Italy, The Netherlands, Poland, Portugal.
2.1.2 Offence n°1 : Unlawful discharge of hazardous substances into water:

- **Offence committed intentionally which causes or is likely to cause substantial damage to the environment**

  The prison penalty generally provided in the Member States is around 3 years maximum for this offence.

  Lowest penalties:

  - Belgium: prison penalty up to 6 months
  - Luxembourg: prison penalty up to 6 months. There is no difference between intentional and negligent offences
  - Malta: prison penalty up to 2 years exists but only in case of re-offending.
  - Slovenia: prison penalty up to 1 year

  It is important to notice that these Member States do not provide for more important custodial sentences in case the act provokes a large scale harm to environment or endangers human health.

- **Offence committed by negligence which causes or is likely to cause substantial damage to the environment**

  The prison penalty set forth in most Member States ranges from 6 months to 1 year maximum. Most Member States do not distinguish between negligence and serious negligence, except Finland which considers that an offence committed trough gross negligence is equivalent to a deliberate offence.

- **Offence committed intentionally or negligently which causes large scale harm to the environment or endangers human health**

  The prison penalty can reach 8 or even 10 years in some countries (with an average penalty of maximum 5 years in case of negligence).

  Lowest penalties:

  - United Kingdom: 2 years maximum in case of indictable offence (except in Scotland, 5 years)
  - France: 2 years maximum
  - Estonia: 1 year maximum
  - Greece: up to 2 years (except in case of grievous bodily injury or death: minimum 10 years)
These Member States do not provide for more severe penalties in case of large scale damage to the environment.

2.1.3 Offence n°2: Unlawful dumping of waste:

- **Offence committed intentionally, which causes or is likely to cause substantial damage to the environment**

The average prison penalty is up to 2 years.

Germany, Czech Republic, Italy, Latvia and Slovenia had set up criminal penalties for the unlawful dumping, dealing or elimination of hazardous waste. The unlawful dumping of non-hazardous waste is punished through administrative fines in Germany and Italy.

Lowest prison penalties:

- Brussels’ region provides only for fines whereas in the 2 other regions a prison penalty up to 5 years is established in case of illegal dumping of waste causing harm to human health.
- Luxembourg: prison penalty up to 6 months.
- Slovenia: prison penalty up to 1 year for unlawful dumping of dangerous waste.
- Malta: a prison penalty up to 2 years is provided but only in case of re-offending.

In these Member States there is no increased penalty for large scale damage to the environment.

In Germany, the Criminal Code states that the act shall not be punishable if harmful effect on the environment, especially on human beings, bodies of water, the air, the soil, useful animals or useful plants, are obviously excluded due to the small quantity of wastes.

- **Offence committed by negligence which causes or is likely to cause substantial damage to the environment:**

With regard to this offence, most Member States do not distinguish between the penalties applicable to deliberate action and negligence.

The level of penalties is rather based on the damage caused.
• **Offence involving a large scale harm to the environment or a danger to human health:**

There are important disparities between the Member States and sanctions range from 2 years to 10 years.

Lowest prison penalties:

- United kingdom: 2 years maximum in case of indictable offence
- France: 2 years maximum
- Estonia: 3 years maximum
- Greece: maximum 2 years (except in case of grievous bodily injury or death: minimum 10 years)

These countries do not provide for more severe penalties in case of large scale damage to the environment.

**2.1.4 Offence n°3: Illegal shipment of waste**

In most Member states, this offence is covered by the more general criminal offence of illegal import, export and transport of waste.

One can notice important disparities between the criminal sanctions laid down under the Member States legislation. Imprisonment penalties range from 2 up to 5 years.

Many member states provide for a prison sanction only where the act concerns hazardous waste (Czech Republic, Estonia, Latvia) and/or only if it leads to an environmental damage (Greece, Spain, Hungary, Latvia, Lithuania, Poland, Slovakia). In this case the prison penalty is high (up to 7-8 years).

Lowest prison penalties:

- Luxembourg (from 8 days to 6 month)
- Malta: a prison penalty of 2 years maximum is provided but only in case of re-offending.
2.1.5 Offence n°4: Unlawful significant deterioration of a protected habitat

Most Member States have created a special criminal offence concerning this act. The average criminal penalty is up to 3 years.

Lowest penalties:

- Belgium:
  - Walloon district: prison penalty up to 6 months
  - Brussels: a fine up to 125 €
  - Flanders provides for a prison penalty up to 3 years

- France: prison penalty up to 6 months
- Malta: a prison penalty up to 2 years is provided but only in case of re-offending.
- Italy: no criminal sanction (administrative fine)
- Romania: no criminal sanction
- United Kingdom: prison penalty up to 6 months (except in Northern Ireland where there is no prison penalty)

The penalties are very high in Germany (prison penalty up to 5 years), Latvia (up 6 years of imprisonment) in Sweden in case of large scale damage or an act of a particularly dangerous nature (6 years).

2.1.6 Offence n°5: Unlawful trade in or use of Ozone Depleting Substances

There are still noticeable disparities between the Members States and, where the offence is criminalized, there are important differences between the criminal sanctions.

No specific criminal penalties could be identified in the following countries. Note that in some of these Member States when we carried out the research very general criminal provisions covering either damage to the environment or air pollution were sometimes mentioned as relevant for this offence. We have considered that such provisions were not relevant since they did not correspond to the offence of illegal use and trade in ODS:

- Bulgaria
- Czech Republic
- Greece
- Latvia
- Romania
- Slovakia (according to the information obtained by the Commission the offence is sanctioned by a fine, but we do not know whether it is an administrative or a criminal fine and the Slovak authorities that were contacted in the course of this study have not answered this question)
- Slovenia (according to the information obtained by the Commission the offence is sanctioned by a fine, but we do not know whether it is
an administrative or a criminal fine and the Slovenian authorities that were contacted in the course of this study have not answered this question)
- Sweden (administrative sanction unless the violation of the provisions of the Regulation lead to environmental disturbances)

No prison penalty is provided for this offence in the following Member States:
- United Kingdom
- Austria
- Luxembourg
- Portugal

**General remarks:**

- As for Denmark and Sweden, it should be pointed out that fines do not have a pre established limitation: the level will be established on a case by case basis by the judge who will take into consideration the defendant situation.

- In Finland, Germany, Austria, Estonia and Latvia the amount of the criminal fines depend on the offender’s income. These countries has adopted the daily rate system. The daily rates are calculated on the basis of the average daily income of the convicted offender.(see the typology of penalties for these countries). The Latvian system is different because the maximum criminal fines are determined according to the minimum monthly wage.

- As for Greece, the maximum level of criminal fines is quite low whereas administrative sanctions are much higher.

- Poland establishes, as Bulgaria, a particular sanction: restriction of freedom which consists of the prohibition to travel.
2.2 Legal persons

2.2.1 Offence n°1 : Unlawful discharge of hazardous substances into water:

- Criminal fines are set in Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United kingdom.

Lowest fines:  
- Bulgaria: fine up to 2500 €
- Malta: fine up to 2300 € (4600 € in case of re-offending)
- Brussels and Flanders: fine up to 5000 €
- Portugal: fine up to 4500 €

Highest fines:  
- Walloon district: fine up to 1 000 000 €
- Estonia: fine up to 16 000 000 €
- Slovakia: fine up to 2 168 218 €

- Administrative fines: Austria, Czech Republic, Germany, Spain, Sweden

- No fines: Luxembourg

2.2.2 Offence n°2 : Unlawful dumping of waste:

- Criminal fines: in Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, United kingdom

Lowest fines:  
- Brussels: illegal dumping of a person’s own waste: fine up to 250 € (500 € if it is dangerous waste); illegal dumping of waste other that own waste: fine up to 2500 € (7500 € in case of dangerous waste)
- Bulgaria: fine up to 2500 €
- Malta: fine up to 2300 € (4600 € in case of re-offending)
Highest fines:
- Ireland: in case of conviction on indictment, fine up to 15 000 000 €
- Estonia: fine up to 16 000 000 €
- Slovakia: fine up to 2 168 818 €

- Administrative fines: Austria, Czech Republic, Germany, Spain, Sweden

- No fines: Luxembourg, Slovenia

2.2.3 Offence n°3: Illegal shipment of waste

- Criminal fines: in Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, United Kingdom

Lowest fines:
- Portugal: fine up to 3000 €
- Bulgaria: fine up to 5000 €

Highest fines:
- Ireland: fine up to 15 000 000 €
- Estonia: fine up to 16 000 000 €

- Administrative fines: Austria, Czech Republic, Germany, Spain, Sweden

Lowest fine: Austria: fine up to 7270 €

- No fines: Luxembourg, Poland, Slovenia, Spain

2.2.4 Offence n°4: Unlawful significant deterioration of a protected habitat

- Criminal fines: in Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom

Lowest fines:
- Belgium: Brussels fine up to 125 €, Walloon District: fine up to 300 €
- Malta: fine up to 2300 € for each specimen (4600 € in case of re-offending)
- United Kingdom fine up to 3760 € concerning wild plants and up to 7500 € concerning wild animals
Highest fines:

- Estonia: fine up to 16 000 000 €
- Slovakia: fine up to 2 168 818 €

- Administrative fines: Austria, Czech Republic, Germany, Sweden
- No fine: Luxembourg, Spain

2.2.5 Offence n°5 : Unlawful trade in or use of ozone depleting substances

- Criminal fines: in Belgium, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Malta, Poland, Romania, United kingdom

- Lowest fines:
  - Flanders: illegal use of ODS: fine up to 300 €
  - Estonia: fine up to 3250 €
  - Malta: fine up to 2300 € (4600 € in case of re-offending)
  - Ireland: fine up to 3000 €

- Administrative fines: Austria, Czech Republic, Germany, Spain, Sweden
- No fines: Luxembourg

General remarks with regards to the sanctions applicable to legal persons:

- Austria does not provide for criminal sanctions. Under administrative penal law, a pecuniary fine may be imposed on the responsible representative appointed by the corporate body.

- There is no corporate criminal liability in Luxembourg and the administrative penalties applicable to legal persons does not include fines.

- In Ireland, United Kingdom and Malta the same sanctions apply to either natural or legal persons whereas in most Member States fines are higher for legal persons than for natural persons.

- Belgium and Slovakia have established a system of conversion of the imprisonment penalties into fines.
3 List of Annexes

Annex I: Complete tables per Member State

Annex II: simplified tables per Member State

Annex III: tables per offence